

B.C.D 13-24

August 28, 2013

**EMPLOYER STATUS DETERMINATION
Oregon International Port of Coos Bay (OIPCB)**

This is a determination of the Railroad Retirement Board concerning the status of Oregon International Port of Coos Bay (OIPCB) as an employer under the Railroad Retirement Act (45 U.S.C. §231 et seq.) and the Railroad Unemployment Insurance Act (45 U.S.C. §351 et seq.).

In Surface Transportation Board (STB) Finance Docket 35385, decided July 2, 2010, OIPCB filed a verified notice of exemption under 49 CFR § 1150.41 to acquire approximately 22.37 miles of rail line known as the Coquilla Branch from Union Pacific Railroad Company (UP) (B.A. No. 1713) in Coos County, Oregon. The line extends between milepost 763.13, in Cordes, Oregon, where it connects to track currently owned by OIP, and milepost 785.5, in Coquille, Oregon, the end of the line.

Information regarding OIPCB was furnished by Ms. Sandra L. Brown, Counsel for OIPCB. According to Ms. Brown, OIPCB entered into an interim agreement with an operator for the rail line owned by OIPCB. The operator obtained authority from the STB in September 2011 in Finance Docket 35550, American Railroad Group Transportation Services, LLC – Continuance-in-Control Exemption – Coos Bay Railroad Operating Company, LLC d/b/a Coos Bay Rail Link, and Finance Docket 35551, Coos Bay Railroad Operating Company, LLC d/b/a Coos Bay Rail Link – Operation Exemption – Line Railroad Owned by the Oregon International Port of Coos Bay.

According to Ms. Brown, limited operations began on the line by the Coos Bay Railroad Operating Company (CBROC) (B.A. No. 5745), a covered rail carrier, in the middle of October 2011. Ms. Brown stated that OIPCB is continuing to oversee the rehabilitation and capital projects necessary to fully open the whole line. Ms. Brown stated that OIPCB is not and does not intend to provide any operations on the rail line and that all railroad operations will be provided by a covered employer. OIPCB does not retain control over day to day operations on the rail line, according to Ms. Brown. Ms. Brown stated in June 2012 that OIPCB anticipated that rehabilitation of the whole line would be complete by the end of 2012. Before the expiration of the current interim operating agreement, OIPCB intends to enter into a long term agreement for the continued operation of the rail line by CBROC which will continue the operations of the rail line by a covered employer and not by OIPCB.

Section 1(a)(1) of the Railroad Retirement Act (45 U.S.C. §231(a)(1)), insofar as relevant here, defines a covered employer as:

- (i) any carrier by railroad subject to the jurisdiction of the Surface Transportation Board under part A of subtitle IV of Title 49, United States Code.

Section 1 of the RUIA contains essentially the same definition.

In its decision regarding the employer status of *Railroad Ventures, Inc.* (B.C.D. 00-47), the Board held that an entity that has STB authority to operate a rail line, but leases or contracts with another to operate the line in question, is covered under the Acts administered by the Board unless the Board determines that the entity is not a carrier. The Board enunciated a three-part test in B.C.D. 00-47 to be applied in making this determination. An entity that leases a line to another company or contracts with another company to operate the line is a carrier under the Railroad Retirement Act unless the Board finds that all three of the following factors exist: 1) the entity does not have as a primary business purpose to profit from railroad activities; 2) the entity does not operate or retain the capacity to operate the rail line; and 3) the operator of the rail line is already covered or would be found to be covered under the Acts administered by the Board.

Applying this to the facts of OPICB, the Board determines that OPICB is not an employer covered under the Acts. The evidence of record shows that OPICB is a state governmental entity that does not intend to profit from rail operations on the rail lines that OIPCB has acquired. As the facts show, OIPCB acquired the larger portion of the rail line through proceedings through the STB's "Feeder Line Proceeding" in order to aid the economy of the South Coast of Oregon and to prevent the loss of rail service to the region because of the abandonment being pursued by the prior owner. Based on these facts, we find that OPICB does not have as a primary business purpose to profit from railroad activities. With respect to the second part of the *Railroad Ventures* test, the evidence shows that OPICB does not operate the rail line and does not have the capacity to operate the rail line. Turning to the third criteria, the record shows that another covered rail carrier conducts railroad operations over the rail line. The Board therefore finds that OPICB is not a carrier under the test set forth in our *Railroad Ventures* decision.

Accordingly, the Board finds that OIPCB is not a covered employer under the Railroad Retirement and Railroad Unemployment Insurance Acts.

Original signed by:

Michael S. Schwartz

Walter A. Barrows

Jerome F. Kever